



Records Containing Personal Information

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Wisconsin law establishes various protections for personal information, including laws tailored to sectors such as healthcare,¹ insurance,² and education.³ Further, Wisconsin law provides protections that span across industries, with requirements for disposal of records containing personal information and for notifying individuals of unauthorized access to personal information. This issue brief summarizes these disposal and notification laws and highlights recent developments in Wisconsin related to data privacy.

DISPOSAL OF RECORDS

[Section 134.97, Stats.](#), establishes various requirements related to the disposal of records containing personal information. The statute applies these requirements to financial institutions, medical businesses, and tax preparation businesses. For the purposes of the law, “personal information” is defined as any of the following:

- Personally identifiable data about an individual’s medical condition, if the data are not generally considered to be public knowledge.
- Personally identifiable data that contain an individual’s account or customer number, account balance, balance owing, credit balance, or credit limit, if the data relate to an individual’s account or transaction with a financial institution.
- Personally identifiable data provided by an individual to a financial institution upon opening an account or applying for a loan or credit.
- Personally identifiable data about an individual’s federal, state or local tax returns.

[[s. 134.97 \(1\)\(e\), Stats.](#)]

A financial institution, medical business, or tax preparation business is prohibited from disposing of these records unless those entities take certain steps related to the destruction or modification of the record. These steps generally include shredding the record, erasing personal information in the record, modifying the record to make personal information unreadable, or taking other actions that the record holder reasonably believes will ensure that no unauthorized person will have access to personal information contained in the record. [[s. 134.97 \(2\), Stats.](#)] Additionally, the statute provides civil forfeiture penalties and a basis for civil liability for damages arising from records that are disposed of improperly. [[s. 134.97 \(3\)](#) and [\(4\), Stats.](#)]

NOTICE OF UNAUTHORIZED ACQUISITION OF PERSONAL INFORMATION

[Section 134.98, Stats.](#), requires certain entities to notify individuals if there is an unauthorized acquisition of the individual’s personal information. These requirements apply to a wider range of entities than the disposal requirements under [s. 134.97, Stats.](#) Specifically, the notification requirements are applied to a person who does any of the following:

- Conducts business in Wisconsin and maintains personal information in the ordinary course of business.
- Licenses personal information in Wisconsin.
- Maintains for a Wisconsin resident a depository account as defined in [s. 815.18 \(2\) \(e\), Stats.](#)
- Lends money to a Wisconsin resident.

Entities covered by the notification law are further defined to include various state and local government entities. [[s. 134.98\(1\)\(a\), Stats.](#)]

For the purpose of the notification law, personal information is defined as an individual's last name and the individual's first name or first initial, in combination with, and linked to, any of the following elements, provided that the element is not publicly available information and is not encrypted, redacted, or altered in a manner that renders the element unreadable:

- The individual's social security number.
- The individual's driver's license number or state identification number.
- The number of the individual's financial account number, including a credit or debit card account number, or any security code, access code, or password that would permit access to the individual's financial account.
- The individual's DNA profile, as defined in [s. 939.74 \(2d\)\(a\), Stats.](#)
- The individual's unique biometric data, including fingerprint, voice print, retina or iris image, or any other unique physical representation.

[[s. 134.98\(1\)\(b\), Stats.](#)]

If an entity described above knows that there has been an unauthorized acquisition of personal information in the entity's possession, Wisconsin law generally requires that entity to make certain efforts to notify each subject of the personal information.⁴ This notification must be made within a reasonable time, not to exceed 45 days after the entity learns of the unauthorized acquisition of information. Required notifications generally must be made by mail or by a method that an entity previously used to communicate with the subject of the personal information. [[s. 134.98\(2\)](#) and [\(3\), Stats.](#)]

RECENT DEVELOPMENTS IN WISCONSIN

The issue of consumer data privacy continues to garner attention in Wisconsin government. In the 2019-2020 Legislative Session, various bills were introduced that would alter the landscape of data privacy regulation in the state. For instance, [2019 Senate Bill 851](#) included various provisions mirroring the California Consumer Privacy Act, a law that created certain protections for California residents regarding their online personal information.⁵ Similarly, [2019 Assembly Bills 870, 871, and 872](#), collectively entitled by their author as the "Wisconsin Data Privacy Act (WDPA)," would establish new requirements for any entity that uses, discloses, processes, or permits access to, consumers' personal data. Although the above bills were not enacted, they highlight options that the Legislature may wish to consider to address data privacy issues.

In addition to activity in the Legislature, the Department of Agriculture, Trade and Consumer Protection recently convened an advisory committee on data privacy and security. In September 2020, the committee published a [report](#) exploring existing data laws and proposals, both in Wisconsin and beyond. The report also identifies topics for consideration when regulating issues related to data privacy, security, and breach.

¹ [s. 146.82, Stats.](#)

² [ch. Ins 25, Wis. Adm. Code.](#)

³ [s. 118.125\(2\), Stats.](#)

⁴ In situations where an entity stores personal information but does not own or license the information, the entity is required to report unauthorized acquisitions to the person that owns or licenses the information (rather than to the subject of the personal information).

⁵ For further information on the California Consumer Privacy Act, see Legislative Council Issue Brief, [California Consumer Privacy Act](#) (Dec. 2019).